



SUPREME COURT OF THE UNITED STATES
UNITED STATES V. WINDSOR, EXECUTOR OF THE ESTATE OF SPYER, ET AL., 570 U.S. 744 (2013)
EXCERPTS OF BRIEF OF AMICUS CURIAE OUTSERVE-SLDN INC. ON THE MERITS
IN SUPPORT OF RESPONDENT EDITH WINDSOR, MARCH 01, 2013

"OutServe-SLDN Inc. is a non-profit organization that supports lesbian, gay, bisexual and transgender ("LGBT") current and former members of the United States military. OutServe-SLDN submits this amicus curiae brief to highlight the significant implications of the Court's decision in this case for the physical, psychological and financial well-being of gay and lesbian veterans and members of the armed forces, and for the vitality of our nation's military as a whole. OutServe-SLDN comprises two formerly separate organizations, which merged in 2012: Servicemembers Legal Defense Network ("SLDN") and OutServe. SLDN was founded in 1993, in response to Congress enacting "Don't Ask, Don't Tell" ("DADT"), to provide free, confidential and direct legal services to LGBT service members and veterans affected by DADT and by the previous ban on gay and lesbian service.

SLDN assisted more than 2,000 active and former service members, and was instrumental in the successful effort to repeal DADT. After DADT's repeal, SLDN assisted veterans discharged under DADT by correcting discharge records and helping those who wished to return to service; supported transgender military service; helped defend LGBT service members and veterans facing discrimination; and worked to secure equal benefits for LGBT service members, veterans and their families.

OutServe began as an underground network of LGBT service members connected via Facebook in 2010, and had more than 6,000 members worldwide. During the fight to repeal DADT, OutServe told the stories of active duty gay and lesbian service members in the media and at the Pentagon, and those who were serving in silence to be heard. As a unified organization, OutServe-SLDN continued to work toward equal service for all LGBT members of the military and to ensure that they, and their families, receive the same benefits as their opposite-sex counterparts. Given the pending McLaughlin lawsuit and its long history in assisting LGBT service members, OutServe-SLDN believes its perspective may be of assistance to the Court.

The military often highlights the importance of the 'military family' by emphasizing that it 'recruits soldiers, but retains families'. The military provides financial benefits and support services to service members and families that are invaluable, particularly in trying times when service members are deployed, wounded or serving their country. The military demands far more from those who serve and their families than does a typical employer. To their country, service members accept that they may be deployed far from their families and loved ones, and they must prepare for the possibility that their service may cost them their lives. The separation and sacrifice caused by a distant deployment often strains military families, and service members often worry whether their families will be provided for in their absence.

In asking so much from its service members and their families, the military extends a promise in return. The military assures service members it will provide for their families in their absence, whether that absence results from a temporary deployment or death. It keeps that promise by providing military families a host of benefits and family support services, many of which hinge upon a person's status as a 'spouse' of a service member. The so-called Defense of Marriage Act ("DOMA"), 1 U.S.C. § 7, prevents the military from honoring its promise to certain military families because it nullifies marriages between persons of the same sex for federal purposes. Even where a same-sex couple is legally married under state law, DOMA prevents the military from recognizing that marriage and acknowledging a service member's same-sex spouse as a "spouse" in providing benefits. These military spouses cannot be designated the next-of-kin to receive notice of the service member's death and do not receive a surviving spouse death benefit. They are not included in family support programs for families of deployed service members. They are denied housing, health care and other benefits that are important to military families and essential for attracting and retaining well-qualified military personnel. When they die, these military spouses do not have the right to be buried in a military cemetery next to the veteran they married.

In the military context, the denial of equal benefits for equal service and equal sacrifice is more than a fairness issue. The military consistently has emphasized that providing benefits to military spouses improves morale and is critical to national security. These benefits address an important source of worry for service members, allowing them to focus on the tasks at hand. A Marine who is ordered to kick down a door or to take a hill in the midst of incoming gunfire should not have to worry about what would happen to his or her spouse if the Marine were to die in battle. The military knows this and has explicitly made that point to Congress in seeking spousal benefits in the past. Accordingly, the military also has committed itself to provide equal benefits to the same-sex spouses of its service members in the event this Court invalidates DOMA.

Julie Torres '13